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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/929,674	08/14/2001	Joseph H. Abler	870091.90173	9738

26710 7590 02/20/2004

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MILWAUKEE, WI 53202-4497

EXAMINER
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MADSEN, ROBERT A

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 02/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/929,674

Applicant(s)

ABLER, JOSEPH H.

Examiner

Robert Madsen

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 November 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 38-49 is/are pending in the application.
- 4a) Of the above claim(s) 46-49 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 38-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other:

### **DETAILED ACTION**

1. Applicant's election with traverse of 38-45 in the Amendment mailed November 5, 2003 is acknowledged. The traversal is on the ground(s) that the amendment to claim 46 recites " a mechanism which places a plurality of cheese blocks sequentially into different ones of the plurality of cooling cells" mirrors a step of the method of claim 38. This is not found persuasive because the method of claims 38-45 as claimed can be completed by hand and does not require a "mechanism" for placing the cheese blocks sequentially into different cells. The requirement is still deemed proper and is therefore made FINAL.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 38-45 are rejected under 35 U.S.C. 102(b) as being anticipated by Nelles (US 4815368).

4. Regarding claim 38-40,42-44, Nelles teaches placing cheese blocks sequentially into different sections of a tank (e.g. either by shelves 63 or rack 15 in Figures, with the shelves defining a "cell") using an inlet flume, wherein cheese blocks are loaded cell-by-cell(beginning with the lowest shelf) and rack-by-rack such that the blocks that have been in the tank for the longest period of time, and

are thus the coldest as recited in claim 43, are those on the lowest cells, and the cold brine flows from the bottom of the tank vertically through each rack (i.e. contacting the lowest shelves/cells first), as recited in claim 38 and 39 (See abstract, Figures Column 3, line 45 to Column 4, line 3, Column 5, line 63 to Column 6, line 7, and Column 8, line 14-62). Since the cold brine is first introduced to the cells that have been in the tank for the longest time (i.e. at the bottom of the tank) and is forced to flow upward through each rack, the brine is sequentially transferred from selected cells (i.e. beginning with the bottom of each rack, which has been in the tank for the longest time ) to the cells immediately above, which have been in the tank for the next longest period of time and are not as cold as the previous, as recited in claims 40 , 42,44.

5. Regarding claim 41, Nelles teaches the brine passes vertically through each rack and the upper level of brine is removed from the tank, and thus removed from the blocks that have been in the tank the least amount of time are in shelves, or cells, since those are located top of the tank of the brine ( see column 9, lines 25-47).

6. Regarding claim 45, Nelles teaches the brine is chilled before entering the tank (Column 5, line 57 to Column 6, line 7).

7. Claim 38 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Johnson (US 5018440).

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8. See column 7, lines 12-40 and figures wherein the flow of liquid is periodically flowing from the cheese that has been in the tank for the greatest amount of time.

**Conclusion**

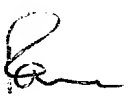
9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Doering et al. (US 1716488) teaches cooling cheese blocks sequentially while held in cells.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 7:00AM-3:30PM M-F.

11. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

12. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.

  
MILTON I. CANO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700

Robert Madsen   
Examiner  
Art Unit 1761